BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.

In re:	
City of Marlborough Westerly Wastewater Treatment Facility	NPDES Appeal Nos. 05-05 & 05-09
NPDES Permit No. MA0100480	

In re:	
Town of Maynard Water Pollution Control Facility	NPDES Appeal Nos. 05-06 & 05-12
NPDES Permit No. MA0101001	

In re:	
Town of Westborough Wastewater Treatment Facility	NPDES Appeal Nos. 05-07 & 05-08
NPDES Permit No. MA0100412	

ORDER DENYING STAY REQUEST AND EXTENDING TIME TO FILE RESPONSES

By Motion filed[1] on October 19, 2005, U.S. EPA Region I (the "Region") seeks a stay of the proceedings in the above-captioned matters to allow the Region and at least two of the

[1] Documents are "filed" with the Board on the date they are *received*.

petitioners to engage in settlement discussions. *See* Motion to Stay Proceedings (Oct. 19, 2005) ("Motion"). More specifically, the Region states that it "has retained a skilled mediator to serve as a neutral convener for the limited purpose of helping the parties explore the possibility of mediation." Motion at 3. During this preliminary process, the parties will decide whether mediation is feasible and, if so, engage in more extensive efforts at settlement. According to the Motion, only the Town of Marlborough and Westborough have agreed to participate in this process, which the Region expects to complete by November 21, 2005. *Id.* The other two petitioners in the above-captioned matters, the Town of Maynard and the Organization for the Assabet River ("OAR"), have opted not to participate in mediation, although the Region states that it has "extended an open offer to Maynard and OAR to enter the mediation at any time they deem appropriate in the future and will keep the two parties updated on the proceedings."[2] *Id.* The Motion states further that:

> Absent a stay, the parties will be required to divert their time and effort from mediation to the proceeding before this Board. Therefore, in an effort to conserve resources and to encourage efficiency and promote judicial economy, the Region requests that these proceedings be stayed and that the Board establish November 21, 2005 as the date by which the Region will provide the Board with a report on the status of the mediation proceedings. If the parties agree to move forward with the second stage of the mediation process, the Region will request a further limited stay of the proceedings to allow the parties sufficient time to conclude mediation.

Id. at 3-4.

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[2] The Motion states that the Town of Maynard has decided to separately consider a settlement offer made by OAR to the Towns of Maynard, Marlborough, and Westborough, which is scheduled to expire on October 21, 2005. Motion at 3.

OAR has filed a motion opposing the Region's request for a stay[3] for the following reasons: (1) because OAR and the town of Maynard have decided not to participate in mediation, there is no justification for a stay of OAR's petition for review of the Maynard permit; (2) with regard to the remaining two permits, there is little likelihood that the mediation will be successful given the failure of past attempts at resolution; and (3) the prospect of mediation is not a sufficient basis on which to impose a stay, and is prejudicial "as delay harms the river by forestalling compliance with the requisite new permit limits." OAR Opposition at 1. OAR states that it does not oppose an extension of time for the Region to file a response to the petitions for review in the above-captioned matters until November 21, 2005, "as long as it is clear that the [Region's Response] must be filed by that time absent an actual agreement by all parties to further extend the deadline." *Id.* at 2.

Upon review, the Board agrees with OAR that a stay is not appropriate at the present time. Given that: (1) only two of the petitioners in this matter, the Towns of Marlborough and Westborough, have agreed to participate in the mediation assessment; (2) the Towns of Marlborough and Westborough and the Region have not yet agreed that mediation is appropriate; and (3) the Board has not yet received information on the outcome of OAR's outstanding settlement offer to the permittees, the Board has decided to deny the request for a stay at this time. Rather, the Board has decided to extend the deadline for the Region to respond to the petitions until November 28, 2005. If, by that date, the Region and any of the petitioners in these matters have decided to pursue mediation, the Board will consider a renewed stay request from

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[3] Motion in Opposition to Stay Proceedings ("OAR Opposition") (Oct. 20, 2005).

the Region. If, on the other hand, the parties have decided to end the mediation process, the Region shall file its responses with the Board no later than November 28, 2005. If the Region wishes to respond to the amicus brief to be filed with the Board on November 4, 2005 by the Conservation Law Foundation, the response must also be filed by November 28, 2005. Finally, the deadline for the Westborough Treatment Plant Board to respond to the petition filed by OAR is also extended to November 28, 2005.

So ordered.

Dated:
October 25, 2005

ENVIRONMENTAL APPEALS BOARD

Anna L. Wolgast
Environmental Appeals Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order Denying Stay Request and Extending Time to File Responses in the matters of City of Marlborough Westerly Wastewater Treatment Facility, NPDES Appeal Nos. 05-05 & 05-09; Town of Maynard Water Pollution Control Facility, NPDES Appeal Nos. 05-06 & 05-12; Town of Westborough Wastewater Treatment Facility, NPDES Appeal Nos. 05-07 & 05-08, were sent to the following persons in the manner indicated:

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Date: OCT 25 2005

Annette Duncan
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